IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTY FIFTH DAY OF OCTOBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE BILAL NAZKI

and
THE HON'BLE MR JUSTICE S.ANANDA REDDY

WRIT PETITION NO : 25654 of 1999

Between:

M/s.Kamal Wineries 3-33,

Saroor Nagar, Hyderabad - 500 035
Rep. by its Chief Executive, Mr.Niranjanlal **..... PETITIONER**

AND

1.A.P.Breweries Coporation Ltd.

Hyderabad, rep.by its Managing Director.
2.Commerical Tax Officer,

Saroornagar Circle, Hyderabad

3.Commercial Tax Officer,

Agapur, Hyderabad. **.....RESPONDENTS**

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue to writ of Mandamus or any other appropriate writ, order or direction, declaring the inaction of the 1st Respondent in not refunding the excess tax collected from the petitioner as illegal, arbitrary and discriminative and consequently direct the 1st Respondent to refund the same together with interest at the rate of 18% to the Petitioner forthwith and also further to declare the order dt. 3.9.99 passed by the 2nd Respondent as illegal and arbitrary.

Counsel for the Petitioner: Mr.K.Raji Reddy

Counsel for the Respondent No.1: Mr.G.Manohar

Counsel for the Respondent Nos.2 & 3: SPL GP FOR COMMERCIAL TAXES

The Court made the following :

ORDER: (PER Sri Bilal Nazki, J)

Heard learned Counsel for the parties and at their request, CTO, Agapura, is impleaded as third respondent.

The case of the petitioner was that an amount of Rs.14,26,219/- was deducted by the first respondent and paid to the second respondent-CTO, Saroornagar. Respondent Nos.1 and 2 have filed counter-affidavits, in which it is stated that the said amount was paid as an order was passed by the Commercial Tax Officer, Saroornagar, under Section 17 of the APGST Act. Aggrieved by that order, the Corporation filed an appeal before the appellate Deputy Commissioner (CT), Secunderabad. The Appellate authority by its order dated 1-10-2003, in appeal, accepted the contention of the Corporation and remanded the matter to the assessing authority for fresh assessment. After quantification of the amount that is eligible for exemption by the assessing authority, the Corporation is entitled for the refund of corresponding amount remitted pursuant to the orders of the assessing authority. It further stated that after refund of the amount by the assessing authority, the same would be paid to the writ petitioner by the Corporation, as such the Corporation has accepted the contention of the petitioner that he was entitled to the refund of these amounts.

In this view of the matter, nothing much remains in this writ petition to be decided by us. However, as the appellate authority has passed an order on 1-10-2003, the assessing authority should have passed the order by now. If no order has been passed so far, we direct that the assessing authority shall pass appropriate orders within four weeks from the date of receipt of a copy of this order.

Writ Petition is accordingly disposed of. No costs.

(BILAL NAZKI, J)

25th October, 2004

(S.ANANDA REDDY, J)

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Copy to:

1.The Managing Director,

A.P.Breweries Coporation Ltd.

Hyderabad.
2.The Commerical Tax Officer,

Saroornagar Circle, Hyderabad

3.The Commercial Tax Officer,

Agapura, Hyderabad.

4.Two CCs to the Spl. G.P for Commercial Taxes,

High Court Buildings, High Court of A.P.,

Hyderabad (O.U.T)

5.Two CD copies.